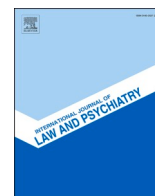


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# Challenges for people with intellectual disabilities in law enforcement interactions in Ireland; thematic analysis informed by 1537 person-years' experience

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## ABSTRACT

**Background:** People with intellectual disabilities (PWID) are over-represented in criminal justice systems globally. This over-representation reveals itself at once in the demographic make-up of prison populations, as well as those detained in police settings as suspects of crime. While it is well-established in international literature that individuals who find themselves in the latter scenario face particular challenges in negotiating the forensic formalities routinely followed by the police at the pre-trial stage of criminal proceedings on account of their impairments, the specific difficulties experienced by PWID as suspects within Ireland's criminal justice system has yet to be explained, or indeed, understood. In seeking to address this research lacuna, this paper yields an account of a qualitative study which was aimed at identifying the unique challenges which PWID face in their interactions with Law Enforcement Officials (LEOs) in Ireland.

**Aims:** This study aimed to elicit perspectives across a range of disciplines with regard to barriers for PWID interacting with LEOs in Ireland, and sought viewpoints on the content of a proposed awareness programme.

**Methods:** A survey using purposive sampling was used to elicit viewpoints from people from representative organisations for PWID, people working with voluntary organisations for PWID, healthcare professionals working with PWID and professionals from the criminal justice system (including members of An Garda Síochána, lawyers, members of the Irish judiciary and officials within the Airport Police). Data were anonymised at the point of collection. Qualitative thematic analysis was conducted to extract themes based on the data retrieved through the survey.

**Results:** Ninety-five ( $n = 95$ ) responses were received from individuals reporting a cumulative experience of 1537 person-years. Respondents identified themselves as members of one of three groups; people working in a voluntary or representative organisation for PWID ( $n = 42$ , 44.2%); people working in healthcare ( $n = 31$ , 32.6%); and people working in law enforcement ( $n = 22$ , 23.1%). Three themes were identified from the qualitative thematic analysis. The first theme, "Barriers to Communication", identified challenges which PWID and LEO experience in their mutual interactions and communications with one another. The second theme, "Building Awareness and Skills", identified elements of an ID awareness programme for LEOs. The third theme, "Institutional and System Change", identified possible lines of innovation with respect to contemporary police practice and the availability of supports for both PWID and the LEOs who work with them.

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*Originality/Value:* This study represents the first dedicated qualitative inquiry conducted on a multidisciplinary level into the barriers which healthcare professionals, legal professionals and disability advocacy groups perceive to be faced by PWID in their interactions with LEOs in Ireland. Consequently, the findings from this study will act as a valuable template in the direction of informing the development of an ID awareness programme for LEOs in Ireland. In addition, these research findings are expected to usefully inform the development of national policy and protocols in areas related to health, disability and justice. In offering a rich evidence-base for future policy initiatives, the timing of this study is particularly significant. The recent ratification by Ireland of the UN Convention for the Rights of People with Disabilities (UNCRPD), together with the synchronous emergence of an evolving emphasis on human rights-based policing at a national level in Ireland, has meant that Irish policy-makers have a unique opportunity to re-imagine the pre-trial formalities of Ireland's criminal process in order to demonstrate an increased sensitivity to the needs of PWID. Securing equal access to justice for such individuals, it is important to emphasise, is a legal requirement pursuant to Article 13 of the UNCRPD. To the extent therefore that this study yields unique insights into the barriers faced by PWID in their interactions with LEOs, the results of this study are potentially generalisable to other jurisdictions that have ratified the UNCRPD and are developing policy to accord with Article 13.

## 1. Introduction

### 1.1. People with intellectual disabilities (PWID) are over-represented in the Criminal Justice System worldwide

It is well-established in international literature that people with intellectual disabilities (PWID) are over-represented in criminal justice systems globally. This over-representation is apparent, not only in the demographic make-up of international prison populations (Fazel, Xenitidis, & Powell, 2008; Gulati et al., 2018; Hellenbach, Karatzias, & Brown, 2017) but also, importantly, in the profiles of those who are routinely addressed by police officers as suspects of crime (Gulati, Cusack, Kelly, Kilcommins, & Dunne, 2020; Murphy, 2019; Young, Goodwin, Sedgwick, & Gudjonsson, 2013). In the United Kingdom (UK), the Bradley review (Bradley, 2009) reported that the prevalence of PWID in police custody ranged from 0.5% to 9% of detainees. This compares to a community prevalence of 2.16% of adults in the UK (MENCAP, 2020). A recent Dutch study found a significantly higher prevalence of PWID in police custody than international estimates with 28.7% screening positive for ID (Geijssen, Kop, & de Ruiter, 2018).

PWID, it is important to note, do not form a homogenous group (Cusack, 2017; Edwards, 2014). The type of cognitive impairments that exist, the level of their severity and the degree to which they influence social functioning can vary significantly between people falling within this classification (Cusack, 2020b; Gudjonsson & Henry, 2003; Kebbell & Hatton, 1999). Moreover, the intellectual disability label masks the reality that many people with intellectual disabilities exhibit important individual differences in how they respond to the forensic inquiries which dominate the pre-trial and trial formalities of archetypal adversarial procedure (Cusack, 2018; Cusack, 2020a; Cusack, 2020c; Gudjonsson, 2003). Thus, just as the heterogeneity of this constituency must not be forgotten, so too must we not overlook the social dimension to the construction of intellectual impairment as a disability within the criminal justice context (Cusack, 2020c; Finkelstein, 1980; McLean & Williamson, 2007; Oliver, 1996).

Whilst every effort must be made to avoid pathologising PWID as suspects of crime, certain global comments can nevertheless be made in relation to the capacity of such individuals to interact with Law Enforcement Officials (LEOs) on account of their shared cognitive profiles (Cusack, 2017). As a preliminary point, it is worth emphasising that even a modest degree of cognitive impairment has been shown to have a reasonable impact on an individual's ability to deliver clear, complete and comprehensive account of events to legal authorities (Gudjonsson & Henry, 2003). Moreover there is now a significant body of research to suggest many PWID are susceptible to a range of additional psychological vulnerabilities - such as, for instance, a tendency to acquiesce, a predilection for confabulation; a heightened vulnerability to confabulation and a risk of suggestibility- all of which can significantly prejudice their capacity to respond to mainstream forensic inquiries (Clare, 2003;

Cusack, 2020b; Morrison, Forrester-Jones, Bradshaw, & Murphy, 2019). Numerous studies, for example, have found that PWID are more suggestible, more acquiescent, more likely to confabulate and more likely to engage in nay-saying than their counterparts within the general population (Gudjonsson & Henry, 2003; Gudjonsson, 1999). There is also evidence to suggest that such witnesses are more likely to obfuscate generic details about an alleged incident such as names, times and dates (Beail, 2002; Kebbell, Hatton, Johnson, & O'Kelly, 2001), that they will entertain a final option bias in response to closed-multiple choice questions (Heal & Sigelman, 1995), that their knowledge of the legal process is poor and that they struggle routinely to comprehend legal terminology (Ericson & Perlman, 2001). However, while these insights from the field of cognitive psychology raise serious questions about the reliability of narrative accounts elicited from PWID, there is, as Gudjonsson points out, no empirical basis for treating as unreliable the evidence of an individual simply because its author presents it with a number of psychological vulnerabilities: "Persons with moderate learning disability may well be able to give reliable evidence pertaining to basic facts, even when they are generally highly suggestible and prone to confabulation" (Gudjonsson, 2003: 334). The central controlling factor, it would seem, is the manner in which he or she is questioned - particularly by LEOs- about the salient features of an alleged incident.

### 1.2. The views of PWID of challenges when encountering law enforcement officers (LEOs)

PWID can find the criminal justice system frightening, confusing and can feel isolated. A systematic review of six databases of studies exploring the experiences of PWID, with a total of 1199 participants, identified that PWID frequently describe challenges in police custody, experiencing particular difficulties in understanding and communicating information. They report a paucity of appropriate supports generally in this setting and an unmet need for the provision of procedural and emotional supports (Gulati, Cusack, Kelly, et al., 2020).

### 1.3. The international experience of law enforcement officers encountering people with an intellectual disability

There is an increasing international focus on human rights-based policing. Such rights-based policing models are thought to be central to the effectiveness of community-based policing given their emphasis on securing consent from, and cooperation with, diverse constituencies in society (Coen, 2014). Indeed, Article 2 of the United Nations code of conduct for Law Enforcement Officials (United Nations, 1979) states that LEOs "shall respect and protect human dignity and maintain and uphold the human rights of all persons". However notwithstanding the emergence of human rights-based conceptions of police procedure, international research would suggest that several challenges continue to be faced routinely by LEOs when interfacing with PWID. By way of

example, a recent review of six databases reporting the experience of LEOs interfacing with suspects who have an intellectual disability (ID) identified 16 studies from five countries involving 983 LEOs. LEOs surveyed in these studies identified a range of operational policing concerns which variously stemmed from an unmet need for specialised training, difficulties associated with identifying PWID, the absence of procedural safeguards and the communicative challenges which are presented when interacting with individuals who have ID at the investigative stage of criminal proceedings (Gulati, Kelly, Cusack, Kilcommins, and Dunne, 2020c).

#### 1.4. PWID in the Irish criminal justice system

In mimicking incarceration patterns at an international level (Fazel et al., 2008; Hellenbach et al., 2017), Ireland's prison population has been found to accommodate an over-representation of PWID (Gulati et al., 2018). This high prevalence rate of intellectual impairment within Irish prisons raises questions with respect to the capacity of Irish criminal justice agencies, including serving members of An Garda Síochána (the Irish police force), but also defence lawyers, the DPP's (Director of Public Prosecutions) Office, the judiciary, probation officers and prison authorities to, at once, recognise and respond appropriately to situations involving a suspect with an intellectual disability. Though research is sparse in the area, the failure of the Irish legal profession, for example, to understand the difficulties posed by the adversarial criminal justice for people with disabilities has been noted in Irish victimological discourse (Edwards, Harold, & Kilcommins, 2012). At the pre-trial stage of criminal proceedings meanwhile, the clear need to "mainstream" disability awareness training within the Irish police service was noted in a landmark report in 2018 (*Commission for the Future of Policing in Ireland, 2018*). This area has been specifically identified within the *An Garda Síochána Human Rights Strategy 2020–22* (An Garda Síochána, 2019a; An Garda Síochána, 2019b). As the primary gatekeepers of Ireland's criminal justice system, members of An Garda Síochána have unparalleled influence over the trajectory of a criminal investigation. Moreover, as first responders to alleged acts of criminality, they are uniquely placed to shape a suspect's initial impression about the values, fairness and legitimacy of Ireland's criminal justice system (Cusack, 2017; Cusack, 2019).

One of the clearest Irish examples of the dangers associated with adopting an improper or disability-neutral approach to investigative interviewing, especially in circumstances where a suspect is vulnerable, is the case of Dean Lyons. This case arose following the double murder in March 1997. Following an investigation into these deaths, Mr. Lyons voluntarily attended at a Garda Station (Garda is Irish for Police and Gardaí is the plural form) in Dublin and confessed to the murders. At the time of his confession in July 1997, Mr. Lyons was 24 years old and described as being "borderline learning disabled" (Birmingham, 2006). A number of weeks following Mr. Lyons's confession, Mark Nash admitted to these murders (Nash v. Director of Public Prosecutions, 2015 IESC 32). In the circumstances, it emerged that Mr. Lyons had made a false confession and a decision was made on 7 February 2006 to establish a *Commission of Investigation into the Dean Lyons Case*, under George Birmingham SC, to consider the forensic developments that contributed to the elicitation of his false admission of guilt (Birmingham, 2006). While the Commission ultimately concluded that there had been no deliberate attempt at an investigative stage in proceedings to undermine the rights of Mr. Lyons, it noted that inappropriate leading questions were inadvertently asked of him by interviewing Gardaí which equipped him with the information to maintain a credible (albeit false) confession. It was also noted that Mr. Lyons was exceptionally suggestible and that he had a tendency to yield to leading questions. In the aftermath of the publication of the Commission's findings, and in contemplation of the publication of similar concerns by the Morris Tribunal with respect to police investigative practices (Morris, 2006), an entirely new interview model - the Garda Síochána Interview Model

(GSIM)- was mainstreamed in Irish policing operations (Noone, 2015).

#### 1.5. Drivers for change in Ireland

Just as a wave of human-rights based policing has begun to take hold in international jurisdictions, so too has Irish police culture - as evidenced by the advent of the GSIM model - felt the reformative exigencies of rights-based law enforcement. In September 2018 a landmark report entitled "The Future of Policing in Ireland", was published by the Commission on the Future of Policing in Ireland (Cusack, 2019). A central component of this vision was the architecting of a new human rights infrastructure within the mindset, ethos and operations of all members of An Garda Síochána (*Commission for the Future of Policing in Ireland, 2018*). In an effort then to meaningfully realise the implementation of this recommendation, a series of significant measures have been adopted by An Garda Síochána within the past two years with the stated intention of "embedding human rights and ethical behaviour into policing" (An Garda Síochána, 2019a, 2019b: 4). At a policy level, this commitment is evident, not only in the publication by the Irish government of a detailed and ambitious plan to implement the recommendations outlined in the Commission on the Future of Policing in Ireland's report (*Government of Ireland, 2018*); but also more broadly in the human rights objectives and strategies identified by the Irish police service in the *An Garda Síochána Mission & Strategy Statement 2019–2021* (An Garda Síochána, 2019b).

From a legal perspective, the implementation of these innovations can be viewed as a further meaningful step by the State in the direction of meeting its constitutional obligations, not only to vindicate the right of all citizens to a trial in due course of law under Article 38.1 of Búnreacht na hÉireann (Ireland's Constitution), but also to vindicate the life, person, good name, and property rights of every citizen under Article 40.3.2. At an international level meanwhile these initiatives must be regarded, at least in part, as important developments in the direction of meeting Ireland's human rights commitments pursuant to the United Nations' Convention on the Rights of Persons with Disabilities. Ireland signed the Convention in 2007 and, further to its ratification in March 2018, it entered into force from 19 April 2018. In doing so, Ireland became the last EU Member State to explicitly commit to meeting the rigorous human rights standards prescribed this seminal international instrument.

Any attempt to meaningfully meet Ireland's commitments under Article 13 of the UNRPD ("Access to Justice") requires a dedicated, multi-agency approach involving, at once, legal professionals, members of the judiciary, officials within the Courts Service, officers in the Prison Service and Ireland's Probation Board. It also, perhaps most importantly, enjoins upon members of An Garda Síochána to adopt an inclusionary, disability-sensitive approach in their pre-trial interactions with persons with disabilities. In particular, given its emphasis on mainstreaming disability awareness programmes at all stages of the criminal process, Article 13(2) may rightly be regarded as containing the "germ of a solution" with respect to addressing the overrepresentation of those with ID in Irish prisons (Gulati, Cusack, Kilcommins, & Dunne, 2020; Murphy et al., 2017). Ireland's first report to the Committee on the Rights of Persons with Disabilities is due. Given that this report is intended to coincide with the State's overdue ratification of the Optional Protocol (a parallel international instrument which supports the UNCRPD), it will act as a valuable litmus test of the State's commitment to ensuring the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities.

#### 1.6. Rationale for the current study

The rationale for the current study was two-fold. Primarily, this was to determine any themes arising specific to the Irish context of the LEO-PWID interface. This would be important to organisations and Irish government departments engaging in policy development in light of



Ireland's ratification of the UNCRPD, as well as those advocating for PWID in pursuing equal access to justice. Data from this study would usefully inform the development of ID awareness training for An Garda Síochána and other agencies involved in Justice.

## 2. Aims

To elicit the views of people from representative organisations for PWID, people working with voluntary organisations for PWID, healthcare professionals working with PWID, and professionals from the criminal justice system about.

- a) The challenges for PWID when encountering LEOs in Ireland.
- b) What could be done to address the above challenges?, and.
- c) What should be included in a training programme for LEOs focused on ID?

## 3. Methods

A survey addressing the three key questions (as in the aims of the study) was developed and operationalised into an electronic format. A purposive sampling technique was used to ensure that a breadth of opinion would be captured. Following ethical approval provided by the Faculty of Education and Health Sciences at the University of Limerick, a link was sent to points of contact at representative organisations for PWID, people working with voluntary organisations for PWID (non-statutory agencies who provide direct services to people with intellectual disability), healthcare professionals working with PWID identified through professional faculties/special interest groups and professionals from the Criminal Justice System (CJS) including members of An Garda Síochána, solicitors, judges, officers within the airport police, as well as forensic medical practitioners on mailing lists. Participation in the study was voluntary and data anonymised at the point of collection. Responses were collected over one calendar month (1st July 2020 - 31st July 2020). Responses were analysed quantitatively for demographics of responders (role, specific role, years of experience). Applied Thematic Analysis was completed by two researchers (AOC and JB).

Thematic analysis procedures aim to identify patterns across data sets by identifying and naming themes. The thematic analysis approach employed in this analysis was a codebook approach described as Applied Thematic Analysis (ATA). ATA is a "rigorous, yet inductive, set of procedures designed to specifically identify and examine themes from textual data in a way that is transparent and credible" (Guest, MacQueen, & Namey, 2012). A number of steps in the inlays were undertaken. A subset of data was coded independently by two researchers who developed a set of preliminary codes. During this coding process each researcher adopted the same approach of reading the data and identifying initial codes which were associated with specific segments of the data. These codes were then reviewed and compared with each other and synthesised into a number of themes. For instance in the initial coding a number of codes related to communication challenges were identified in the data, these included challenges in understanding, ability to relate events, unrecognised communication issues, accurate reporting, general communication issues. Following this initial coding these codes were reviewed and sorted under the broad theme of communication. After independently coding an agreed subset of the data the researchers then met to discuss the results of their initial analysis, comparing their codes and initial conceptualisation of the data. While both identified broadly similar codes and themes the wordings and titles used were different. The researchers discussed these differences and terminology and agreed a title for each code and theme. Additional themes identified by just one researcher were further explored and discussed and assimilated into the agreed codebook. This codebook contained an agreed set of codes and themes identified in the first phase of coding. Through discussion the researchers had an agreed understanding of each code and the broader themes under development. The

next phase was the analysis of the entire data set using this agreed codebook. Data that supported and illuminated each theme was identified and some additional codes were identified. This phase of coding enabled the researchers to further refine each broad theme and ensure that they were representing the main codes and themes in the entire data set. When both researchers had undertaken this analysis they jointly reviewed their analysis, discussing and exploring the main themes or patterns they had identified in the data. They also explored with how best to present these themes and agreed on three broad themes which captured the main patterns in the data; Barriers to Communication, Building Awareness and Skills and Institutional and System Changes in consensus with the lead researcher (GG).

Data are reported collectively to ensure the anonymity of respondents. In the analysis no distinction was made between participants recruited from voluntary bodies, healthcare and law enforcement.

## 4. Results

### 4.1. Respondent categories

Ninety-five ( $n = 95$ ) responses were received from individuals representing a cumulative experience of 1537 person-years. Respondents identified themselves as one of three groups; people working in a voluntary or representative organisation for PWID ( $n = 42$ , 44.2%); people working in healthcare ( $n = 31$ , 32.6%); people working in law enforcement ( $n = 22$ , 23.1%).

a) Respondents included forty-two ( $n = 42$ , 44.2%) people who identified themselves as working in a voluntary or representative organisation for PWID with a total of 454 person-years of experience (Mean 10.8 years, SD 9.1). These organisations included voluntary/non-statutory agencies who provide direct services to people with intellectual disability including advocacy, health and social care. Respondents in this sub-group included board level director/assistant director/chairperson ( $n = 4$ ), organisation solicitor ( $n = 1$ ), outreach service leader ( $n = 1$ ), human resource manager ( $n = 1$ ), project manager for mental health and ID ( $n = 1$ ), administrator ( $n = 1$ ), advocacy workers ( $n = 4$ ), nurses ( $n = 3$ ), speech and language therapist ( $n = 1$ ), social workers ( $n = 16$ ), clinical psychologists ( $n = 8$ ), psychiatrist ( $n = 1$ ).

b) Thirty-one respondents ( $n = 31$ , 32.6%) identified themselves as working primarily in the field of healthcare, with a total of 604 person-years' experience (mean 19.5 years, SD 10.1). Respondents in this subgroup included psychiatrists ( $n = 12$ ), a forensic psychiatrist ( $n = 1$ ), nurses ( $n = 7$ ), clinical psychologists ( $n = 6$ ), social worker ( $n = 2$ ), a healthcare chaplain ( $n = 1$ ), a healthcare solicitor ( $n = 1$ ) and a speech and language therapist ( $n = 1$ ).

c) Twenty-two respondents ( $n = 22$ , 23.1%) identified themselves as working in the field of law enforcement, with a total of 479 person-years of experience (Mean 21.8 years, SD 8.7). Respondents in this sub-group included Gardaí ( $n = 5$ ), Airport Police/Fire service officers ( $n = 2$ ), Judges ( $n = 2$ ), Barristers ( $n = 3$ ), Solicitors ( $n = 8$ ) and Legal Academics ( $n = 2$ ).

### 4.2. Thematic analysis

Three themes were identified within the data. Fig. 1 displays these themes. Figs. 2-4 display the sub-themes extracted.

The first theme, Barriers to Communication, identified the challenges for PWID and LEO as they interact and communicate. The second theme, Building Awareness and Skills, outlines the elements of an ID awareness programme for LEOs and identifies key guidelines for PWID and their families. The third theme, Institutional and System Change, outlines changes in practice and supports for PWID and LEOs who work with them.

#### 4.2.1. Theme 1: Barriers to communication

Within this theme, two sub-themes were identified that capture the

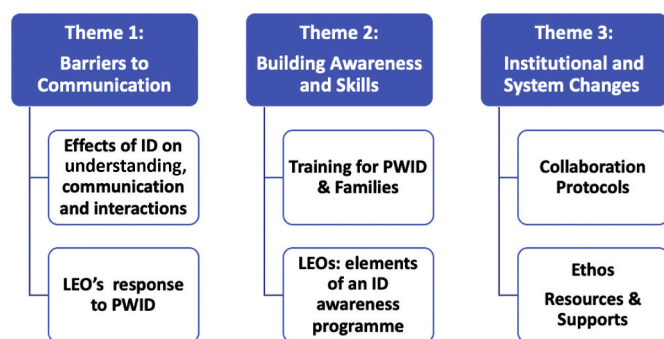


Fig. 1. Thematic analysis.

challenges in communication for PWID and for those LEOs who are interacting and communicating with them. The first subtheme describes the impact of an intellectual disability on an individual's ability to comprehend, communicate, and interact. PWID may find it difficult to fully comprehend the situation they find themselves in. This limited comprehension can manifest in a variety of ways including an inability to grasp the seriousness of the crime and its impact on others, limited insight into how their own responses may lead to further difficulty for them, and difficulty understanding instructions and information, e.g. a caution. This difficulty in comprehension may also create a vulnerability to suggestion, they may agree with statements and acquiesce to suggestions more readily. One participant commented that "people with ID are very vulnerable to suggestion and coercion without adequate advocacy" (Participant 86). This limited understanding, which may not be recognised by LEOs, will also affect the individual's ability to

communicate effectively. They may have difficulty relating experiences and indicating that they require additional support. One participant noted that "people with ID often have communication difficulties and it can be difficult for them to make themselves understood" (Participant 37). In addition, PWID may have limited coping skills and strategies and may have extreme emotional and behavioural reactions. These issues with understanding, communication, and managing interactions may not be recognised as being related to an intellectual disability and could be misinterpreted as noncompliance, which is likely to compound difficulties in communication. A participant illuminated this point; "anxiety which can lead to changed/ heightened/ inappropriate behaviour, that can be misinterpreted by the officer". (Participant 59).

The second sub-theme describes the difficulties that LEOs experience as they communicate with PWID. LEOs may have a "lack of understanding of their needs and vulnerabilities" (Participant 33) which makes it difficult to recognise that an individual may have an ID and

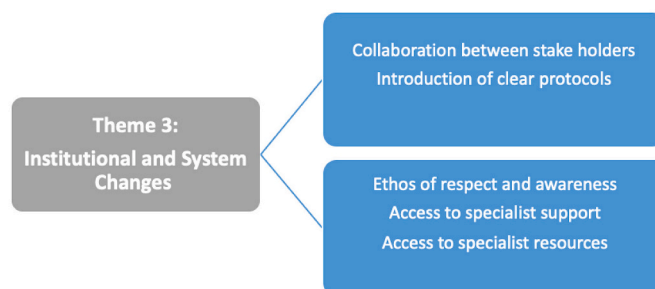


Fig. 4. Theme 3: Institutional and System Changes.

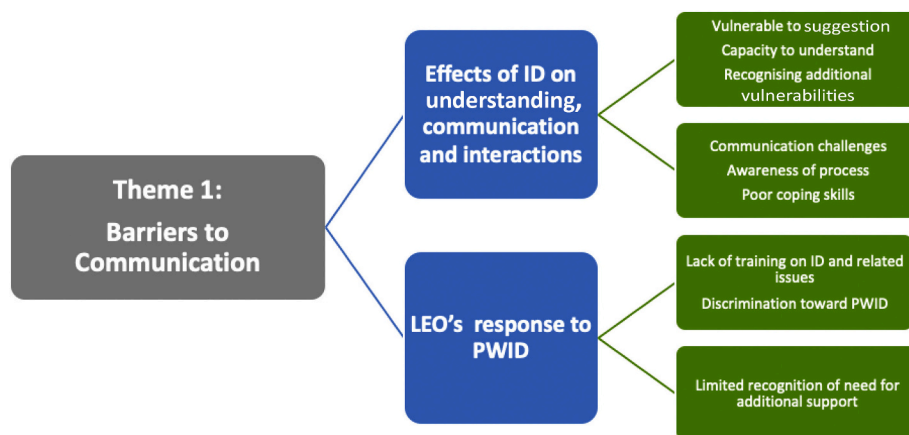


Fig. 2. Theme 1: Barriers to Communication.

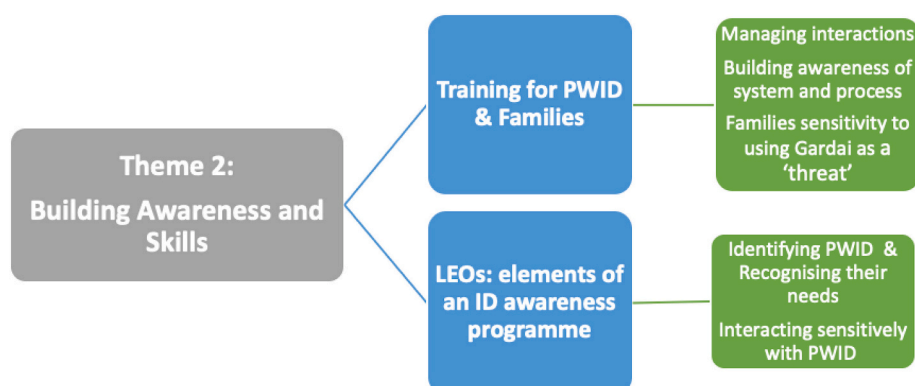


Fig. 3. Theme 2: Building Awareness and Skills.

understand the nature of their communication difficulties. Without training, LEOs will have little knowledge and awareness of the complex nature of ID and its related issues, and so “the law enforcement officer may lack understanding on how to interact or approach a situation with a person with an intellectual disability” (Participant 29). Data analysis indicated that LEOs’ recognition of the need for and provision of additional supports for PWID is a challenge. One participant commented that “Gardaí need training but also advocates for person with intellectual disability when person becomes involved in the system” (Participant 58). Interactions and communications may not be tailored to suit the individuals’ needs and they may not have access to a supportive person who can act as a guide and advocate. For instance, one participant highlighted “that the person with an intellectual disability requires special accommodations to be made in the context of interviewing, giving statements etc.” (Participant 23). In terms of a formal process, if LEOs do not have clear protocols to follow and a good knowledge of capacity legislation and its practical implementation this will pose challenges for them as they work with PWID. A final issue was the possibility that PWID may experience discrimination as LEOs may not regard them as credible witnesses, may not fully investigate crimes against them or crimes committed by them and be not be fully aware of the human rights of PWID. One participant outlined how “they are often deemed to be unreliable witnesses because of their intellectual disability and many cases do not go to court because of this” (Participant 35).

#### 4.2.2. Theme 2: building awareness and skills

Within this theme, two sub-themes were identified that relate to the need to improve how PWID and their families interact with LEOs, and the specific elements of a training programme for LEOs that would improve their understanding of PWID.

The first sub-theme encompasses the supports necessary for PWID and their families to overcome the difficulties PWID encounter when interacting with LEOs, either as potential suspects or witnesses. For PWID the importance of supporting them to better understand the system and develop strategies to manage their interactions with LEOs were highlighted. One participant commented that there should be “training for those with disabilities on how to respond/ seek clarification/ get help understanding or responding to an officer” (Participant 59) while another commented that there should be “targeted information programs for those with ID” (Participant 87). These comments underscore the need to equip PWIDs with the skills and knowledge to enable them to engage more appropriately with LEOs in the context of investigative endeavours. Resources that should be provided to PWID in such circumstances should provide clear guidance and accessible information to facilitate a greater understanding of the contextual basis of their interaction with LEOs. Within this sub-theme, it was also apparent that families of PWID needed guidance to ensure that they did not inadvertently undermine or prejudice appropriate interaction with LEOs by invoking involvement with the police as a threat. One participant commented that “Relatives citing law officer used as a threat to a person with intellectual disability resulting in developing anxiety when coming in contact with law enforcement (even if no wrong has been committed)” (Participant 27).

The second sub-theme refers to specified elements of a training programme for LEOs which could improve their understanding of PWID. One of the most frequent patterns identified in the data was the dearth of training and awareness within the justice system of the specific needs of PWIDs. One participant commented that there was “...a need for follow up specialist training for experienced officers so that there could be at least one officer in each geographical division/large station who has extensive understanding of people with ID” (Participant 86).

Various participants commented that any awareness programme for LEOs should be given within a human rights perspective which emphasises respect towards, and awareness of, the dignity of PWID. It was also suggested that such a programme be delivered by experts in the field, both those by training and those by lived experience (PWID). One

participant suggested the provision of “training for law enforcement by professionals and by people with intellectual disabilities on their encounters with law enforcement” (Participant 32).

A wide range of training needs were suggested including skills to identify vulnerable individuals who may have a disability, skills such as adapting communications, specialist interview skills, developing more awareness of the effects of emotional distress on behaviour, introductions on relevant policies and procedures and skills at conducting capacity assessments. In addition, the opportunity to informally interact with PWID was suggested either as part of a placement while training suggesting that “placement opportunities during training in services for disabilities may increase understanding and learning for law enforcement officers” (Participant 57).

#### 4.2.3. Theme 3: Institutional and system changes

This theme describes the type of system and institutional changes required to protect and support PWID as they interact with LEOs. Ongoing collaboration and communication between the LEOs and agencies that support PWID was suggested, one participant suggested that there should be “a stronger link between those on the frontline of law enforcement and disability services” (Participant 2). Responsibility for nurturing an ethos of respect and awareness of the complex challenges for PWID was highlighted as an important role of the organisation. As illustrated by this quote: “A culture of respect and understanding of the complexities involved needs to be fostered at management level” (Participant 11).

In terms of resources available to LEO and PWID, the provision of three types of resources were supported in the data. Firstly, the need for the development of, and training on, the protocols to guide LEO on all steps of the process was suggested e.g. giving a caution, interviewing, identifying PWID, capacity assessments as outlined in the following quote “further proper training given to all officers of the protocols that need to be followed when dealing with a vulnerable person” (Participant 90). The second type of resource was access to specialist support for both the PWID and LEOs e.g. specialist solicitors, allied health care, specialist liaison officer, specialist interviewers, supportive allies/advocates, and guides. One participant suggested that there should be an “increased number of specialists in law enforcement personnel focusing this area of work” (Participant 42). Finally, access to easily accessible information, to support PWID, was highlighted as illustrated by one participant; “requirement for the person with an intellectual disability to be offered meaningful support, accessible information in written or other formats” (Participant 9).

## 5. Discussion

### 5.1. Strengths and limitations

The strengths of this study lie in the breadth and experience of the respondents. The sample size allowed a range of themes and subthemes to be elicited. The key strength however was that the largest number of responses to the survey were from those in representative or voluntary organisations for people with ID. The limitations of the study lie in response bias; those with a particular interest in the research question are more likely to respond to a survey. It was not possible to calculate a response rate given the purposive sampling method. Importantly, the study did not directly seek individual responses from people with ID and this would be an area for further research. In the analysis of this study, no distinction was made between data from participants from the various professions. It would have been interesting to explore if differences existed between responses and future research could explore potential distinct perspectives on these issues. Furthermore, whilst the sample size was comparable to studies in international literature, it is not known whether a different sampling technique and or a larger sample size would have led to the elicitation of additional themes. The study is also limited by an English language bias, as the survey was in

English, potentially excluding those in Irish-speaking Gaeltacht areas.

## 5.2. Findings in an international context

This study reports themes in respect of PWID-LEO interactions in Ireland. The study represents the largest such Irish exercise to date in systematically eliciting perspectives on the barriers faced by PWID in such interactions, and the implications arising for training. The overarching findings are threefold and are consistent with themes elicited from international literature (Gulati, Cusack, Kelly, et al., 2020; Gulati, Kelly, Cusack, et al., 2020).

The UNCRPD places an onus on ratifying nations to ensure equal access to justice for people with disabilities. Every person must be in a position to assert their legal rights, irrespective of a disability. It is difficult, however, for a PWID to assert their rights if they are not aware of their rights, cannot identify that their rights have been infringed, do not know how to exercise their rights, and are not supported to exercise their rights. The themes identified in the current study converge in respect of procedures enabling such assertion of rights, and training for LEOs in respect of such procedures.

The current study identified that identifying PWID in LEO interactions is recognised as a challenge and this is the case internationally. Screening tools often lack large scale validation studies (Ali & Galloway, 2016). LEOs use a variety of informal methods to help identify someone with an ID including facial characteristics and comprehension, as well as behaviour in custody (Douglas & Cuskelly, 2012). The adoption of a checklist that identifies “vulnerability” in the CJS has been proposed (Close and Walker, 2010; Hoyano, 2015). Proposed indicators in the US, for example, include when a suspect changes version of events in response to questions from police more than once; when a suspect agrees without objection to waiver of Miranda rights (based on the 1966 US Supreme Court decision in *Miranda v. Arizona*, establishing the principle that all criminal suspects must be advised of their rights before interrogation) with arresting police officers; when they cannot explain Miranda rights to police officers, when a suspect agrees to allow police officers to search or confiscate personal property without a search warrant, agrees to meet and be interviewed by police officers without an attorney present, when a suspect’s version(s) of events does not match information obtained by police, when a suspect does not understand the questions being asked by police or when a suspect responds to investigator queries with irrelevant and/or highly improbable versions of events (Close & Walker, 2010). The benefits of such an approach is that it potentially identifies “hidden” or “invisible” disability, based on an approach that does not further stereotypes or misconceptions about PWID.

The overarching theme around challenges in communication identified in the current study is consistent with international literature (Gulati, Cusack, Kelly, et al., 2020; Gulati, Kelly, Cusack, et al., 2020). For example, Jessiman and Cameron (2017) interviewed PWID and mental illness or ID, looking at their experience of Appropriate Adults in police custody in the UK; most participants reported that their experience of custody was one of confusion and incomprehension, which was attributed to both their own mental state and the lack of explanation by the police. They identified a need for support around communication as well as procedural support.

The current study highlighted the need for the provision of information in an appropriate format. This is an important consideration in the context of Article 9 of the UNCRPD, which concerns accessibility of facilities and services for people with disabilities. A UK study reported similar challenges for LEOs in explaining the notice of rights, which contains essential, pre-trial information relating to the due process safeguards to which all crime suspects are entitled (Parsons & Sherwood, 2016).

A finding from the current study related to the development of awareness programmes for PWID and their families. This may reduce anxiety and misconceptions about the role of LEOs in any encounters.

## 5.3. Recommendations for future research

The findings of this paper suggest the need for at least three different areas for future research. First, the development and evaluation of an awareness programme around ID for LEOs. Second, the development and evaluation of accessible information for PWID in respect of law enforcement interactions. Third, a systems level evaluation of processes and procedures for PWID within the Irish criminal justice system informed by the viewpoints of those with ID who have interfaced with the system.

## 5.4. Recommendations for National Policy

Irish policing policy is in the process of evolving with human rights based policing central to this development. The current study elicits the perspective that a change in ethos is likely to need collaboration with stakeholders, access to resources, the introduction of clear protocols, and access to specialist support. The development of protocols needs to be guided by the UNCRPD at every stage (Arstein-Kerslake, Gooding, Andrews, & McSherry, 2017).

Protocols need to be developed to support the provision of information and rights in an accessible format (such as easy read leaflets) as well as the provision of support to the PWID so that they understand critical information such as the reason for arrest, their rights (including the caution) and legal processes. Protocols in respect of the presence of a pre-trial safeguard for vulnerable suspects, similar to the “appropriate adult” facility in England and Wales, and establishment of a “registered intermediary” scheme for both vulnerable victims and suspects as proposed by the National Disability Authority in Ireland (National Disability Authority, 2020) need careful consideration with policies supporting consistent provision. In England and Wales, an “Appropriate adult” as in the Police and Criminal Evidence Act 1984 acts to safeguard the interests, rights, entitlements and welfare of children and vulnerable people who are suspected of a criminal offence, by ensuring that they are treated in a fair and just manner and are able to participate effectively. A registered intermediary is a professional with specialist skills in communication, coming from a background such as speech and language therapy and social work whose role is to facilitate communication during the police investigation and at trial between a person with significant communication deficits (which may be on account of a disability, age or other factor) and others in the justice system (National Disability Authority, 2020).

Some safeguards- such as a statutory obligation to provide “mentally handicapped” adult detainees with access to a “responsible adult” and the introduction of training on enhanced cognitive interviewing under the GSIM- are already in place (Garda Custody Regulations, 1987). However, there is little data on the consistency and completeness of their implementation. The advancements undertaken by An Garda Síochána over the past two years in the direction of inculcating a stronger rights-based architecture into the mindset, ethos and operations of its members pursuant to The Human Rights Strategy 2020–2022 (An Garda Síochána, 2019a) offers the promise of meaningfully ameliorating how Ireland’s criminal justice system responds to PWID in the aftermath of a crime. The fervency and enthusiasm with which these innovations have been both conceived and embraced at a policy level, must now be matched with an equal determination to secure their consistent and complete implementation.

Based on the findings of this study, as contextualised with international experience in the area, an emphasis on training for LEOs around PWID needs to be prioritised as part of this movement. Such training could usefully adopt a UNCRPD based human rights approach. On the basis of these findings We suggest a four point model or “Recognition-Communication-Information-Support” as the template. LEOs need training to recognise PWID, develop communication strategies, ensure the provision of information in a format that is suited to the comprehension level of an individual and look to provide practical and emotional support for



PWID in law enforcement interactions.

The UNCRPD presents a once-in-a-generation opportunity to enhance access to justice for PWID. For Ireland, the post-ratification momentum must not be lost.

## Ethics statement

This study was led jointly by the University of Limerick School of Law and School of Medicine, with ethical approval from the Faculty of Education and Health Sciences Research Ethics Committee at the University of Limerick.

## Declaration of Competing Interest

GG, AC, AOC, JB, VM, DW, WC, CMcG, BDK, EF, CPD and SK have no conflicts of interest to declare.

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